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DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Parts 625 and 636

Commodity Credit Corporation

7 CFR Parts 1415, 1465, 1466, 1468, and 1470

RIN 0578-AA64

Conservation Program Recipient Reporting

AGENCY: Commodity Credit Corporation (CCC) and Natural Resources Conservation Service (NRCS), USDA.

ACTION: Final rule.

SUMMARY: The Office of Management and Budget (OMB) issued regulatory guidance to agencies to establish requirements for Federal financial assistance applicants, recipients, and subrecipients that are necessary for the implementation of the Federal Funding Accountability and Transparency Act of 2006 (the Transparency Act). Since FY 2011, NRCS included the requirements identified in each of the NRCS conservation program regulations that involve an award of Federal financial assistance. Section 766 of the Consolidated Appropriations Act of 2018 amended the Food Security Act of 1985 to exempt producers and landowners participating in NRCS conservation programs from the Transparency Act regulations. Therefore, NRCS is removing specific reference to the Transparency Act regulations in its conservation program regulations where such requirements affect its conservation program agreements with producers and landowners.

DATES: Effective [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For specific questions about this notice, please contact Martha Joseph, Special Assistant to the Deputy Chief for Programs, (814) 203-5562 or Martha.joseph@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Discussion

The Office of Management and Budget (OMB) published two regulations in October 2010, 2 CFR Part 25 and 2 CFR Part 170, to assist agencies and recipients of Federal financial assistance comply with the Federal Funding Accountability and Transparency Act of 2006 (FFATA) (Public Law 109-282, as amended). Both regulations had implementation requirements beginning October 1, 2010.

The regulations at 2 CFR Part 25 require, with some exceptions, recipients of Federal financial assistance to apply for and receive a Dun and Bradstreet Universal Numbering Systems (DUNS) number and register in the System for Award Management (SAM). The regulations at 2 CFR Part 170 establish requirements for Federal financial assistance applicants, recipients, and subrecipients. The regulation provides standard wording that each agency must include in its awarding of financial assistance that requires recipients to report information about first-tier subawards and executive compensation under those awards.

During the regulatory clearance process, NRCS cross-referenced the requirements of 2 CFR Part 25 and 2 CFR Part 170 in all conservation program regulations, policies, and program agreements developed subsequent to October 2010. These requirements in particular have been cross-referenced in the following NRCS conservation program regulations: the Watershed Operations and Flood Prevention Program (7 CFR 622.30(d)), the Emergency Watershed

Protection Program (7 CFR 624.6(a)(2)(iv)), the Healthy Forests Reserve Program (7 CFR 625.4(b)(3)), the Wildlife Habitat Incentive Program (7 CFR 636.4(a)(12)), the Grassland Reserve Program (7 CFR 1415.6(e)), the Voluntary Public Access-Habitat Incentives Program (7 CFR 1455.30(c)), the Agricultural Management Assistance Program (7 CFR 1465.5(c)(12)), the Environmental Quality Incentives Program (7 CFR part 1466.6(b)(7)), the Agricultural Conservation Easement Program (7 CFR 1468.20(b)(2)(ii), 1468.23(d), and 1468.30(c)(3)), the Conservation Stewardship Program (7 CFR 1470.6(a)(6)), and the Farm and Ranch Lands Protection Program (7 CFR part 1491.20(d)).

Section 766 of the Consolidated Appropriations Act of 2018 added a new subsection to section 1244 of the Food Security Act of 1985 to exempt producers and landowners participating in NRCS conservation programs from the Transparency Act regulations. Therefore, the purpose of this final rule is to remove from NRCS regulations the requirement that producers and landowners obtain a DUNS number and maintain an active registration in SAM for NRCS conservation program participation. Additionally, in accordance with this statutory exemption, NRCS has removed from its policies and program documents the requirement for DUNS/SAM compliance that affect producers and landowners directly. NRCS will continue to make available to the public program payment information as authorized by Section 1619 of the Food, Conservation, and Energy Act of 2008 in accordance with the transparency principles of the Transparency Act. NRCS will continue to meet its financial control responsibilities, without its conservation program participants having a DUNS number or active SAM registration, through utilization of USDA's business tools that facilitate NRCS's ability to ensure that program payment eligibility and limitations are met.

Thus, this final rule removes the NRCS regulatory provisions that cross-reference compliance with 2 CFR parts 25 and 170 with respect to conservation program agreements between NRCS and producers or landowners. Because the Consolidated Appropriations Act of 2018 did not exempt other entities from 2 CFR parts 25 and 170, NRCS retains its current regulatory requirements for grants and cooperative agreements, such as those under the watershed programs or the Voluntary Public Access Habitat Incentives Program. Therefore, no changes are made to 7 CFR parts 622, 624, 1455, and 1491. Additionally, no changes are made to 7 CFR part 1468 with respect to Agricultural Land Easement agreements under the Agricultural Conservation Easement Program (ACEP), though the regulatory cross-reference to the requirements of 2 CFR parts 25 and 170 are removed with respect to Wetland Reserve Easement agreements under ACEP.

The changes are non-discretionary, and thus no public comments are being solicited.

Executive Order 12866

This document does not meet the criteria for a significant regulatory action as specified in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because neither the CCC nor Natural Resources NRCS is required by 5 U.S.C. 553, or any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Analysis

NRCS has determined that changes made by this rule fall within a category of actions that are excluded from the requirement to prepare either an Environmental Assessment (EA) or

Environmental Impact Statement (EIS). Administrative changes made in this rule fall within a categorical exclusion for policy development relating to routine activities and similar administrative functions (7 CFR 1b.3(a)(1)), and NRCS has identified no extraordinary circumstances that would otherwise require preparation of an EA or EIS.

Paperwork Reduction Act

Section 1244(m) of the Food Security Act of 1985, as amended by Section 766 of the Consolidated Appropriations Act of 2018, exempts producers and landowners participating in NRCS conservation programs from the Transparency Act regulations at 2 CFR parts 25 and 170. Therefore, there is no burden associated with the removal of the reference to the Transparency Act regulations from NRCS conservation program regulations that must be reported pursuant to the Paperwork Reduction Act.

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. In late 2010 and early 2011, USDA engaged in a series of informational sessions to obtain input by Tribal officials or their designees concerning the impact of the original imposition of Transparency Act requirements on the Tribe or Indian Tribal governments, or whether such imposition may preempt Tribal law. USDA will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal officials or their designees concerning ways to improve

this rule in Indian Country. We are unaware of any current Tribal laws that could be in conflict with this final rule. If a Tribe requests consultation, the Natural Resources Conservation Service will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in NRCS conservation program implementation are not expressly mandated by Congress.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, NRCS assessed the effects of this rulemaking action on State, local, and tribal governments, and the public. This action does not compel the expenditure of \$100 million or more by any State, local or tribal governments, or anyone in the private sector, and therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

List of Subjects

7 CFR Part 625

Administrative practice and procedure, Agriculture, Forests and forest products, Soil conservation.

7 CFR Part 636

Administrative practice and procedure, Endangered and threatened species, Government contracts, Wildlife.

7 CFR Part 1415

Administrative practice and procedure, Agriculture, Grazing lands, Soil conservation.

7 CFR Parts 1465 and 1466

Administrative practice and procedure, Government contracts, Natural resources, Soil conservation, Water resources.

7 CFR Part 1468

Agriculture, Flood Plains, Grazing lands, Natural resources, Soil conservation, Wildlife.

7 CFR Part 1470

Agriculture, Forests and forest products, Natural resources, Soil conservation, Water resources, Wildlife.

Accordingly, 7 CFR parts 625, 636, 1415, 1465, 1466, 1468, and 1470 are amended as follows:

PART 625—HEALTHY FORESTS RESERVE PROGRAM

1. The authority citation for part 625 continues to read as follows:

Authority: 16 U.S.C. 6571-6578.

2. Section 625.4 is amended by revising paragraphs (b)(1) and (2) and removing paragraph (b)(3).

The revisions read as follows:

§ 625.4 Program requirements.

(b) ***

(1) Be the landowner of eligible land for which enrollment is sought; and

(2) Agree to provide such information to NRCS, as the agency deems necessary or desirable, to assist in its determination of eligibility for program benefits and for other program implementation purposes.

PART 636—WILDLIFE HABITAT INCENTIVE PROGRAM

3. The authority citation for part 636 continues to read as follows:

Authority: 16 U.S.C. 3839bb-1.

4. Section 636.4 is amended by revising paragraphs (a)(10) and (11) and removing paragraph (a)(12).

The revisions read as follows:

§ 636.4 Program requirements.

(a) ***

(10) Supply information, as required by NRCS, to determine eligibility for the program including, but not limited to, information to verify the applicant's status as a limited resource farmer or rancher or beginning farmer or rancher and payment eligibility as established by 7 CFR part 1400, Adjusted Gross Income (AGI); and

(11) With regard to any participant that utilizes a unique identification number as an alternative to a tax identification number, the participant will utilize only that identifier for any and all other WHIP cost-share agreements to which the participant is a party. Violators will be considered to have provided fraudulent representation and are subject to § 636.13.

PART 1415—GRASSLANDS RESERVE PROGRAM

5. The authority citation for part 1415 continues to read as follows:

Authority: 16 U.S.C. 3838n-3838q.

6. Section 1415.6 is amended by revising paragraphs (c) and (d) and removing paragraph (e).

The revisions read as follows:

§ 1415.6 Participant eligibility.

(c) Meet the Adjusted Gross Income requirements in part 1400 of this chapter, unless exempted under part 1400 of this chapter; and

(d) Meet the conservation compliance requirements found in part 12 of this title.

PART 1465—AGRICULTURAL MANAGEMENT ASSISTANCE

7. The authority citation for part 1465 continues to read as follows:

Authority: 7 U.S.C. 1524(b).

8. Section 1465.5 is amended by revising paragraphs (c)(10) and (11) and removing paragraph (c)(12).

The revisions read as follows:

§ 1465.5 Program requirements.

(c) ***

(10) Be in compliance with the terms of all other USDA-administered conservation program agreements to which the participant is a party; and

(11) Develop and agree to comply with an APO and O&M agreement, as described in §1465.3.

PART 1466—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

9. The authority citation for part 1466 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3839aa-3839-8.

10. Section 1466.6 is amended by:

- a. Revising paragraph (b)(6);
- b. Removing paragraph (b)(7); and
- c. Redesignating paragraph (b)(8) as paragraph (b)(7) and revising it.

The revisions read as follows:

§1466.6 Program requirements.

(b) ***

(6) Supply information, as required by NRCS, to determine eligibility for the program, including but not limited to, information to verify the applicant's status as a limited resource, beginning farmer or rancher, and payment eligibility as established by 7 CFR part 1400; and

(7) Provide a list of all members of the legal entity and embedded entities along with members' tax identification numbers and percentage interest in the entity.

PART 1468—AGRICULTURAL CONSERVATION EASEMENT PROGRAM

11. The authority citation for part 1468 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3865-3865d.

§ 1468.30 [Amended]

12. Section 1468.30 is amended by:

- a. Removing paragraph (c)(3);
- b. Redesignating the second paragraph (c)(4) as paragraph (c)(5); and
- c. Redesignating paragraphs (c)(4) and newly redesignated (c)(5) as paragraphs (c)(3) and (4), respectively.

PART 1470—CONSERVATION STEWARDSHIP PROGRAM

13. The authority citation for part 1470 continues to read as follows:

Authority: 16 U.S.C. 3838d-3838g.

14. Section 1470.6 is amended by:

- a. Revising paragraph (a)(5);
- b. Removing paragraph (a)(6);
- c. Redesignating paragraph (a)(7) as paragraph (a)(6) and revising it.

The revisions read as follows:

§ 1470.6 Eligibility requirements.

(a) ***

(5) Supply information, as required by NRCS, to determine eligibility for the program, including but not limited to, information related to eligibility requirements and ranking factors; conservation activity and production system records; information to verify the applicant's status as an historically underserved producer or a veteran farmer or rancher, if applicable; and payment eligibility as established by 7 CFR part 1400; and

(6) Provide a list of all members of the legal entity or joint operation, as applicable, and embedded entities along with members' tax identification numbers and percentage interest in the legal entity or joint operation. Where applicable; American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payments.

Signed in Washington, DC on May 14, 2018.

Leonard Jordan

Vice President, Commodity Credit Corporation

Acting Chief, Natural Resources Conservation Service.

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